

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 17, 2003

AMENDED IN SENATE JUNE 10, 2003

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1051

Introduced by Assembly Member Goldberg
@@@ (Principal coauthor: Senator Torlakson)

February 20, 2003

An act to amend Section 54999.1 of, and to add Sections 54999.7 and 54999.8 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as amended, Goldberg. Capital facilities fees.

Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility, and defines the term “nondiscriminatory” for these purposes.

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory charge, including, but not limited to, a connection fee, as defined, capacity charge, as defined, or both. The

bill would define the term “nondiscriminatory” with respect to a service rate, commodity charge, or surcharge.

The bill, notwithstanding any of the existing provisions relating to the imposition of a capital facilities fee, would authorize a public agency that provides public utility service to charge a public agency nondiscriminatory monthly or periodic service rates, commodity charges, or surcharges, according to specified criteria.

The bill would make specified declarations with respect to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54999.1 of the Government Code is
2 amended to read:

3 54999.1. For purposes of this chapter:

4 (a) “Actual construction costs” includes the cost of all
5 activities necessary or incidental to the construction of a public
6 utility facility, such as financing, planning, designing, acquisition
7 of property or interests in property, construction, reconstruction,
8 and rehabilitation.

9 (b) “Capacity charge” means any charge imposed on
10 customers who are requesting new public utility services and that
11 is designed to recover costs of public utility facilities necessary to
12 serve new customers.

13 (c) “Capital facilities fee” means any nondiscriminatory
14 charge imposed to pay for public utility facilities, including, but
15 not limited to, a connection fee, a capacity charge, or both.
16 “Capital facilities fee” does not include a service rate, commodity
17 charge, or surcharge, or any capital component thereof.

18 (d) “Connection fee” means a fee for the physical facilities
19 necessary to connect a public agency facility to a public utility,
20 including, but not limited to, meters, meter boxes, and pipelines to
21 make the connection, that does not exceed the actual cost of labor
22 and materials for the installation of those facilities.

23 (e) (1) With respect to a capital facilities fee,
24 “nondiscriminatory” means that the capital facilities fee does not
25 exceed an amount determined on the basis of the same objective
26 criteria and methodology applicable to comparable nonpublic



users, and is not in excess of the proportionate share of the cost of the public utility facilities of benefit to the person or property being charged, based upon the proportionate share of the use of those facilities.

(2) With respect to service rates, commodity charges, or surcharges imposed ~~upon a public agency~~ by a public agency that provides public utility service, “nondiscriminatory” means that the rate, charge, or surcharge is not in excess of the reasonable cost of providing the public utility service ~~on a meter or volumetric basis proportioned by customer usage, to the maximum extent feasible within the rate structure, or as can be provided for in a flat~~ *based on a metered, volumetric, or flat rate structure, or any combination thereof, that is proportioned by customer usage, to the maximum extent feasible within the rate structure.* Rates and charges for wastewater discharge shall be based upon any of the following:

(A) A volumetric basis proportioned by customer usage.

(B) The basis of average flows and loadings for wastewater discharge.

(C) An equivalent dwelling unit methodology.

(D) Any other computational methodology to determine proportionate customer usage, to the maximum extent feasible within the rate structure, or as can be provided for in a flat rate structure.

(f) “Public agency” means the United States or any of its agencies, the state or any of its agencies, the Regents of the University of California, a county, a city, a district, a public authority, or any other political subdivision or public corporation of this state.

(g) “Public utility facility” means a facility for the provision of water, light, heat, communications, power, or garbage service, for flood control, drainage or sanitary purposes, or for sewage collection, treatment, or disposal.

(h) “Public utility service” means service for water, light, heat, communications, power, or garbage, or for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal, provided by a public agency.

(i) (1) “Service rate,” “commodity charge,” or “surcharge” means a rate or charge, including any capital component thereof, and with respect to sewer services, the service fee or service

1 charge, billed on a monthly or periodic basis to all users to recover
2 the costs of providing public utility services to those users,
3 including the costs of operation, maintenance, construction,
4 repair, replacement, or rehabilitation of facilities, or debt service
5 payments on facilities.

6 (2) A service rate, commodity charge, or surcharge is imposed
7 on the date on which the fee, rate, charge, or surcharge is adopted
8 by the public agency imposing it.

9 (3) A surcharge may be included in the same billing statement
10 as the service rate or commodity charge.

11 (j) "State agency" or "state" means any state office,
12 department, division, bureau, board, or commission.

13 SEC. 2. Section 54999.7 is added to the Government Code, to
14 read:

15 54999.7. (a) Notwithstanding any other provision of this
16 chapter, a public agency that provides public utility service may
17 charge a public agency nondiscriminatory monthly or periodic
18 service rates, commodity charges, or surcharges. A public agency
19 providing public utility service proposing to increase a service
20 rate, commodity charge, or surcharge in excess of the percentage
21 increase in the Implicit Price Deflator for State and Local
22 Government Purchases, as determined by the Department of
23 Finance as measured from the effective date of the existing rate or
24 charge to the effective date of the proposed rate or charge, shall
25 notify by certified mail any school district, county office of
26 education, community college district, California State
27 University, University of California, or state agency located within
28 its service area that is a water, sewer, or electric utility customer
29 of the public agency, not less than 30 days prior to the date of any
30 hearing set to consider an ordinance, resolution, or motion
31 enacting or increasing such a service rate, commodity charge, or
32 surcharge. The notice shall state the date, time, and place of any
33 hearing.

34 (b) The notice described in subdivision (a) shall designate an
35 individual at the public agency that provides public utility service
36 who shall make available, upon request, for review and inspection
37 by any school district, county office of education, community
38 college district, California State University, University of
39 California, or state agency located within its service area, the
40 specific information relied upon in setting the service rate,

commodity charge, or surcharge, or increase thereto, including any capital component of the rate increase, and including the methodology used to calculate and allocate the expenditures giving rise to the service rate, commodity charge, or surcharge, or increase thereto. The affected school district, county office of education, community college district, California State University, University of California, or state agency shall designate the individual who is to receive the notice, and the public agency providing public utility service shall direct the notice to that individual. If no individual is designated, then the notice shall be addressed to the billing address of the affected facility.

(c) In these rate matters, ~~a public agency~~ *any school district, county office of education, or community college district, the California State University, the University of California, or any state agency* that is a customer of a public utility provider shall participate in a public process within that ratesetting cycle, including, but not limited to, any public hearings of the public utility on ratesetting issues.

(d) ~~A public agency~~ *school district, county office of education, or community college district, the California State University, the University of California, or a state agency* that is a customer of a public agency that provides public utility services may petition the trial court to invalidate a ratesetting that is not in compliance with the requirements of paragraph (2) of subdivision (e) of Section 54999.1. If one or more public agencies prevail on two separate and distinct rate invalidation proceedings ~~within three rate cycle periods of three years each, the public agency providing public utility services shall thereafter be required to initiate validation proceedings for the three subsequent ratesetting cycles in for the same category of public utility service within nine years, the public agency providing public utility services shall thereafter be required to initiate validating proceedings for that category of public utility service in the three subsequent ratesetting actions, in~~ accordance with Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure and shall pay costs, including reasonable attorney fees, for both parties to such a validating proceeding.

SEC. 3. Section 54999.8 is added to the Government Code, to read:

1 54999.8. Nothing in this chapter is intended to allow costs to
2 be shifted from other ratepayers to a school district, county office
3 of education, community college district, the California State
4 University, the University of California, or a state agency, except
5 ~~as expressly provided in law.~~ *where otherwise permitted by law.*
6 SEC. 4. The provisions of this act are not intended to affect
7 any litigation involving public utility services provided prior to
8 January 1, 2004, brought prior or subsequent to that date. Nothing
9 in the legislative history of this act should be construed as any
10 indication of the meaning of the law as it existed prior to the
11 effective date of this act.

